LATHAM LEAVES TO SEEK UNCLE OF MARY PHAGAN

It Is Said That the Defense

Hopes to Prove Discrep-
ancy in the Time Element
Theory of State.

NINA FORMBY IS NOW IN NEW YORK CITY

She Has Secured Services of

Judge R. R. Jackson and Will Meet Him in Chatta-nooga to Confer About the Case.

That a new and startling phase of the puzzling time element in the Mary Phagan mystery—one contradictory to the state's theory—will be injected into the effort to gain Frank a new trial, was made evident last night when it became known that Harry Latham, an ex-court attache, was on a hurried trip to New Orleans to confer with a reputed relative of the murdered girl.

A close friend of Latham also an ex-court employee, stated late last night that Latham, while on a recent visit to New Orleans, during which he was acquitted of white slavery charges, had become acquainted with the man with whom he goes to confer, and that the acquaintance professed to be an uncle of the slain child.

He is said to have told to have told of a heretofore unknown turn in the time element, which is said to refute the theory and evidence of the prosecution. Its exact nature was not known by Latham's companion. The time element of Frank's trial was, perhaps, the most important in the chain of evidence submitted by both the state and defense.

Will Ask Man to Return.

Latham, it was stated, goes to obtain an affidavit from this man and to prevail upon him to return to Atlanta in event his testimony is needed. This new figure, unknown to anyone except Latham and probably a few others, is reported to have been in Atlanta on the day of the Phagan tragedy, and to have either seen the victim or to have been with her on her journey to the pencil plant.

Formby Woman Gets Attorney.

It also became known last night that Mrs. Nina Formby, deponent of the sensational affidavit said to accuse the police and detectives of having coerced her into a "frame-up" against Frank when she swore to a scandalous story on the convicted man, had retained an attorney to represent her in the matter.

Judge R. R. Jackson, a former justice of the peace and well-known attorney-at-law, stated that the woman is now in New York, living at 211 West 101st street, and that she will come to Chattanooga shortly to consult him regarding the new role she is to play in the famous Frank case. Whether or not she has been in Atlanta recently, he would not state.

He declared he was not aware of the exact contents of her latest affidavit, and that the first he knew of her connection with the new Frank evidence was when she wrote him from New York, retaining his services, as legal advisor. He said that she dared not return to Georgia under present circumstances until she conferred with her attorney.

Scoured City for Her

Detectives scoured the city Tuesday in search of Mrs. Formby, seeking an explanation of her reported “frame-up” charges. They were unable to find her. Former associates declared she had not been seen in considerable while in her familiar rendezvous, and that they were unaware of her whereabouts.

During a conference Tuesday, Chief Lanford intimated strongly that he had ordered his men to seek explanations of an amount of new testimony collected by the Frank defense, including the Formby document and the Albert McKnight repudiation. Also, the rumored refutations of their testimony said to have been made by character witnesses who were put on the stand by the prosecution.

Although the search for him prevailed through Tuesday and Tuesday night, McKnight could not be located. He is said, however, to still be in the city. John Gossett, an ex-court attache, stated last night that he had seen the negro Tuesday afternoon, but would not tell where.

Efforts made late last night and until early this morning failed to locate Mrs. Formby in New York. It as the opinion in New York. It was the opinion of her attorney that she had left that city en-route to Chattanooga, Tenn., in which city she has formerly resided. It is said that she has been away from Atlanta for a number of months. She was not here during the trial, it was stated. Shortly previous to that time she was represented by Judge Jackson in a civil suit, which she won.

Search for McKnight.

Much interest centered Tuesday morning on the aspect thrown upon the Conley trial when vigorous effort was made to apprehend the missing McKnight negro in order to put him on the witness stand. It was stated in court realms that if Conley went upon the stand, and, as in his latest affidavit, denied the story to which he testified at the Frank trial, he would have been prosecuted for perjury.

Plea for Rehearing.

New developments in the noted case were the filing Tuesday morning of a plea for rehearing by the defense. The supreme court is expected to hand down its decision next Saturday. The verdict of guilty rendered by the jury in the Conley trial required only twelve minutes. An interesting phase to the negro sweeper's trial arose when Solicitor Dorsey strove to show to the court that the hair found upon the lathe was that of Mary Phagan.

In speaking of Dr. Harris' statement that he was unable to decide positively one way or the other in regard to the hair strands, the solicitor said:

"It would be just as effective to try to take two specimens of hair, as was done by Dr. Harris, as it would be to compare a dad tree of the forest with one upright and alive."

Explains Difference in Hair.

The solicitor further showed that the strands discovered on the lathe having come from a live scalp, contained oil, life and no tar, while the strands clipped from the girl's body were dead, contained no oil and tar from the soap with which it had been washed by the undertakers. Also that it had been buried beneath the earth, denied the air and sunlight bestowed upon the strands found in the pencil plant.

"It is a scientific impossibility to distinguish he two," Solicitor Dorsey concluded.

The motion for a rehearing before the supreme court contains twenty-one grounds. All portend that the court overlooked salient points of both the oral and written argument submitted at the time of the original hearing. Because the present term of the October session of the supreme court ends next Saturday, it is expected the verdict will be sent down by then.

In case it is not reached by that time, it is speculated that the decision will not be handed down util the March term. In that

event, the remitter of the verdict of affirmation rendered last Tuesday will be withheld until the latest verdict is reached.

Out of the twenty-one grounds upon which the defense asks for a rehearing, only four, it is pointed out, were touched upon by the supreme court, and these four, it is contended, were not given the full consideration desired by the defense. Following are the grounds upon which a rehearing is asked:

Judge Roan's Charge.

"Ground 67—Because the court erred in failing to charge the jury that if a witness knowingly and willfully swore falsely in a material matter, his testimony shall be rejected entirely, unless it be corroborated by facts and circumstances of the case or other creditable evidence."

"The court ought to have given this charge, although no written request was formally made therefor, for the reason that the witness, Jim Conley, who testified as to aiding Frank in the disposal of the body, was attacked by the defendant as utterly unworthy of belief, and he admitted upon the stand that he knew he was lying in the affidavits made by him, with reference to the crime and before the trial.

"Especially ought this charge to have been given, because the court, in his charge to the jury, left the question of the credibility of witnesses to the jury, without any rule of law to govern them in determining their credibility."

Miss Cato's Testimony.

"Ground 58—Because the court permitted the witness, Miss Cato, over the objection of the defendant that the same was incompetent, illegal and immaterial, to testify substantially as follows: 'I know Miss Rebecca Carson. I have seen her go twice into the private ladies' dressing room with Leo M. Frank.'"

"The court permitted this testimony over the objection of the defendant made as is aforesaid and in doing so committed error.

The court stated that this evidence was admitted to dispute the witness they had called."

"It was wholly immaterial to the issues involved in the case whether Frank did or did not go into a private dressing room with Miss Carson. It did, however, prejudice the jury as indicating Frank's immorality with reference to women."

Maggie Griffin's Statement.

"Ground 59—Because the court erred in permitting the witness, Maggie Griffin, to testify over the objection of the defendant made when the testimony was offered that the same was immaterial, illegal and incompetent, to testify substantially as follows:"

"'I have seen Miss Rebecca Carson go into the ladies' dressing room on the fourth floor with Leo M. Frank. Sometimes it was in the evening and sometimes in the morning during working hours. I saw them come in and saw them come out during working hours.'"

"Ground 1—Because the court erred in the permitting the solicitor to prove by the witness, Lee, that the detective, Black, talked to him—the witness—longer and asked him more questions at the police station than did Mr. Frank the day when he talked to the witness. Lee, at 12 o'clock at night on April 29."

"Ground 2—Because the court erred in permitting over objections the witness, Lee, to testify that Frank, on April 29, when alone with him at the station house, talked to him a shorter time than did Mr. Arnold, one of Frank's attorneys, when he interviewed the witness just before the trial."

Frank Employs Counsel.

"Ground 7—Because the court, over objection made when the evidence was offered that the same was irrelevant, permitted the witness, Black to testify that Frank had counsel, Messrs. Rosser and Haas, about 8 or 8:30 o'clock Monday morning, while

Frank was in the station house, brought there by Detectives Black and Haslett."

"Movant contends the employment of counsel, under the circumstances, was no evidence of guilt, but the court's conduct in submitting the fact to the jury was greatly hurtful to the defense."

Mrs. White's Evidence.

"Ground 16—Because the court, over objection of the defendant, made at the time the evidence was offered, that the same the irrelevant, immaterial and not binding on Frank, permitted the witness, Mrs. White, to testify that Arthur White, her husband, and Campbell are both connected with the pencil company, and that she never reported seeding the negro on April 26, 1913, which she testified she did see in the pencil factory to the city detectives until May 7, 1913."

"Ground 23—Because the court permitted, over the defendant's objection, made when the testimony was offered, that it was illegal, immaterial, and because it could not be binding on the defendant, the witness S. L. Rosser, to testify that since April 26, 1913, he had been engaged in connection with this case; that he visits Mrs. Arthur White subsequent to April 26; that the first time the witness ever claimed to have seen the negro at the factory when she went into the factory on April 26 was some time about the 6th or 7th of May."

Attack on Scott.

"Ground 26—Because the court, in permitting the witness, Harry Scott, to testify over the objection of defendant, made at the time the testimony was offered, that the same was irrelevant, immaterial and not binding upon the defendant, that he did not get any information from anyone connected with the National Pencil company that the negro Conley could write; but that he got his information as to that from entirely outside sources, and wholly disconnected with the National Pencil company."

“Ground 27—Because the court permitted the witness, Harry Scott, to testify over the objection of defendant’s counsel, made when the testimony was offered, that the same was irrelevant immaterial, illegal and not binding on the defendant, that the witness first communicated Mrs. White’s statements about seeing a negro on the street floor of the pencil factory on April 26, 1913, to Black, Chief Lanford and Bass Rosser, that the information was given to the detectives on April 28.”

Miss Hall’s Testimony.

“Ground 32—Because the court erred in declining to allow the witness, Miss Hall, to testify that on the morning of April 26, and before the murder was committed, Mr. Frank called her over the telephone, asking her to come to the pencil factory to do stenographic work, stating at the time he called her that he had so much work to do that it would take him till 6 o’clock to get it done.”

“Defendant contends that this testimony was part of the res gestae and ought to have been heard by the court, and failure to do so committed error.”

“Ground 34—Because, while Mrs. Freeman was on the stand, after testifying as to other things, she testified that while she and Miss Hall, on April 26, were at the restaurant immediately contiguous to the pencil factory, and after they had left the factory at 11:45 o’clock a. m., and had had lunch, that Lemmie Quinn came in and stated that he had just been up to see Mr. Frank.”

“Upon motion of the solicitor, this statement that he had been up to see Mr. Frank was ruled out as hearsay.”

“This statement of Lemmie Quinn was a part of the res gestae, and was not hearsay evidence, and was material to the defendant’s case.”

Testimony About Clock.

Ground 55—“Because the court permitted the witness, L. T. Kendrick, over the objection of the defendant, made at the time the evidence was offered, that the same was irrelevant, immaterial and incompetent to testify substantially as follows:”

“The clock at the pencil factory, when I worked there, needed setting about every twenty-four hours. You would have to change it from about three to five minutes, I reckon.’

“Kendrick had not worked at the factory for months, and whether or not the clock was correct at that time was immaterial and tended to confuse the jury in their effort to determine whether or not the clock was accurate upon the date of the tragedy.”

Ground 54—“Because the court permitted the witness, Scott, to testify in behalf of his agency, over the objection of the defendant, that the same was irrelevant, immaterial and incompetent, substantially as follows:”

“‘I got hold of the information about Conley knowing how to write through my operatives that I had investigating while I was out of town. McWorth told me in person when I returned.’”

“This was prejudicial to the defendant, because the solicitor contended that the failure of Frank to report the fact that Conley could write was a circumstance against Frank’s innocence, and he sought to show by the above testimony that the detectives were forced to get that information from someone other than rank.”

Testimony of Gantt.

Ground 53—“Because the court permitted the witness, J. M. Gantt, over the objection of the defendant made when the evidence was offered that the same was irrelevant and immaterial, to testify substantially as follows:”

“‘The clock of the pencil company was not accurate. They may vary all the way from three to five minutes in twenty-four hours.’”

Ground 42—“Because the court permitted McWorth, at the instance of the solicitor general, to testify over the objections of the defendant, made when the evidence , made when the evidence was offered, that the same was irrelevant, immaterial and illegal:”

“‘I reported it (the finding of the club and envelope) to the police force about seventeen hours afterwards. After I reported the finding, I had a further conference with the police about it four hours afterwards. I told John Black about the envelope and the club. I turned the envelope and club into the possession of H. B. Pierce.’”

“This was prejudicial to the defendant, because the solicitor general contended that his failure to sooner report the finding of the club and the envelope to the police were circumstances against Frank. These detectives were not employed by Frank, but by Frank for the National Pencil company, and movant contends that he is not bound by what they did or failed to do. The court should have so instructed the jury.”

Permitted Montag to Testify.

Ground 35—“Because the court permitted, at the instance of the solicitor general, the witness, Sir Montag, to testify over the objection of the defendant, made when same was offered, that same was irrelevant, immaterial and incompetent; that the National Pencil company employed the Pinkertons; that the Pinkertons have not been paid, but have sent in their bills; that they sent them in two or three times; that, otherwise, no request has been made for payment, and that Pierce, of the Pinkerton agency, has not asked the witness for payment.”

“The introduction of this evidence was prejudicial to the defendant, for the reason that the solicitor contended that the pay due the Pinkertons by the Pencil company was withheld for the purpose of affecting the testimony of the agents of that company.”

Additional Ruling Asked.

The four grounds upon which the defense asks for additional ruling follow:

1. The alleged influencing of the jury by demonstrations in the courtroom during the trial, and cheering on the outside while the jury was being polled. The plaintiff in error contends that in rendering its decision on this point the supreme court overlooked the case of Collier v. the state, in which disorder occurred in the hearing of the jury, and the high court held that because of this the defendant did not have a fair and impartial trial in the manner contemplated by law. Other cases cited are the Wolfolk case and the Smith v. Lovejoy case, it being contended that the decision in the Frank case was contrary to the decisions in the three other cases cited.

2. The testimony of the witness Owens, who declared that he had known the English avenue car, upon which it was alleged Mary Phagan rode into the city on the day of the murder, to reach the center of the city two minutes ahead of time. It is pointed out in the motion for a rehearing that “Owens’ testimony deals wholly with transactions occurring after the murder. Whether the English avenue, scheduled for Broad Street at 12:07, got there on time on April 26 is the issue.”

3. The ruling of the supreme court to the effect that Conley having testified that Frank had remarked to him that Frank had remarked to him that he was not built like other men—it being inferable that the person who did the killing sought to have natural or unnatural relations with the deceased—it was relevant to explain the expression quoted by showing previous transactions of the accused. “The plaintiff in error submits that, inasmuch as the alleged remark made by the accused, according to Conley’s testimony, was no evidence of any sexual act and was indeed no evidence of any transaction between the accused and deceased; that it could not be explained or made the basis for the evidence of other unnatural crimes as testified to by the witness Conley.”

Judge Roan’s Remarks.

4. “Plaintiff in error shows that in the nineteenth head note the court recites that where the order overruling the motion for new trial contains nothing which could indicate that the judge was dissatisfied with the verdict or that he failed to exercise his discretion, ‘the supreme court will not, in determining whether the Judge has exercised such discretion, consider oral remarks by him, pending the disposition of the motion.’”

“Plaintiff in error contends that the remarks made by the judge, which form the basis of the ground under consideration, were not merely made for new trial, but were part of the oral judgement delivered by the court, disposing of the motion. They were as much a part of the decision of the motion for a new trial as that part of the decision which denied the new trial, and it so appears in the bill of exceptions, and plaintiff in error contends that the court overlooked this feature of the record.”

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CONLEY CONVICTED GETS YEAR ON GANG

Found Guilty as Accessory After Fact in Mary Phagan Murder at the National Pencil Factory.

Jim Conley today begins the serving of a year's sentence on the chaingaing following the verdict of a jury in his case, which reported Tuesday noon, against the former pencil factory sweeper, charged with being accessory after the fact in the murder of Mary Phagan.

Conley took his sentence stoically. He smiled when he was told by his attorney that he "had got off light."

The second day's developments in the sordid trial proceedings in which Conley was principal were not illumined by the sensationalism brought out Monday.

Solicitor General Dorsey made a point in his summing up before the jury, ridiculing the recent affidavits of the Frank defense who claim that the hair found on the pencil factory lathe and that taken from the head of Mary Phagan were not the same.

"'That is ridiculous," said Dorsey. "Witnesses have sworn that the hair was the same. Dr. Harris would not say the hairs he examined were not the same. He only said it was his opinion that they were not the same. He only said it was his opinion that they were not from the same head. The witness who testified yesterday proved that the girl's hair when she was laid in the grave was clean. This hair found on the lathe was dirty. The two pieces would not be judged accurately, if such is the case."

Judge Ben Hill, in charging the jury, asked the body to disregard the indictment holding Conley as an accessory after the fact in the murder in a felonious sense. The negro was found guilty of the same offense treated as a misdemeanor.